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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	Gen. Docket No. 90-314
	)	RM-7140, RM-7175, RM-7618
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	

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OPPOSITION OF BELL ATLANTIC PERSONAL COMMUNICATIONS, INC.

Gary M. Epstein
Nicholas W. Allard
James H. Barker
LATHAM & WATKINS
Suite 1300
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2505
(202) 637-2200

William L. Roughton
Of Counsel

for Bell Atlantic Personal Communications, Inc.

December 30, 1993

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OPPOSITION OF BELL ATLANTIC PERSONAL COMMUNICATIONS, INC.

Bell Atlantic Personal Communications, Inc., on behalf of the Bell Atlantic Companies[1/] ("Bell Atlantic"), pursuant to Section 1.106 of the Commission's Rules, hereby comments on or opposes certain petitions for reconsideration of the Commission's Second Report and Order in the above-captioned proceeding.[2/]

I. INTRODUCTION & SUMMARY

On December 8, 1993, Bell Atlantic petitioned the Commission to reconsider several major aspects of the PCS Order, which established the spectrum and regulatory structure for a new, broadly defined Personal Communications Service ("PCS"). Almost seventy other petitioners have also requested the Commission to revise or clarify the PCS

1/ This Opposition is submitted by the Bell Atlantic telephone companies -- the Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company, and the New Jersey Bell telephone Company -- as well as Bell Atlantic Mobile Systems, Inc., Bell Atlantic Paging, Inc., and Bell Atlantic Personal Communications, Inc.

2/ In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, Gen. Docket No. 90-314, FCC 93-451, 8 FCC Rcd. ___ (Sept. 23, 1993) ("PCS Order").

Order. These petitions vary in scope and credibility. The Commission has received other proposals that go well beyond the suggestions advocated by Bell Atlantic and actually seem designed to hinder the development of PCS. Bell Atlantic opposes these petitions below.

Specifically, with respect to spectrum allocation issues, the Commission should revise its channelization plan to provide for six licensees with uniform spectrum assignments of 20 MHz in the manner that Bell Atlantic has proposed, and should reject alternative channel plans that share the same deficiencies and uneven spectrum allocations as the Commission's current inefficient allocation scheme. In re-channelizing the PCS spectrum into uniform 20 MHz blocks, the Commission should -- contrary to the petitions of MSS applicants -- affirm its overall spectrum allocation of 120 MHz to licensed PCS, which is necessary to realize the full potential of this encompassing and possibly revolutionary service.

In reconsidering eligibility issues, the Commission should remove its unwarranted and irrational restrictions on cellular company participation in PCS. In so doing, the Commission should reject self-serving proposals presented in the petitions of MC and Comcast, which are obvious instances of "special pleading" designed only to advance the competitive interests of these companies with little consideration of public benefit or overall PCS service development.

Finally, the Commission should reject AT&T's effort to limit the potential applications and services that may become available in the spectrum allocated for unlicensed PCS services. The Commission should also grant the petitions of those parties that have requested the Commission to re-examine the power levels for PCS operators, which currently are unduly restrictive.

II. SPECTRUM ALLOCATION ISSUES

A. **Channelization Plan**

In its own Petition for Reconsideration, Bell Atlantic has urged the Commission to revisit the overly complex, "gerrymandered" channelization plan for PCS licenses set forth in the PCS Order. Bell Atlantic's filing observed that there is virtually no support in the administrative record and no technical or economic justification for the Commission's fragmentation of PCS spectrum into seven uneven blocks. Bell Atlantic expressed the strong belief that the Commission's current allocation plan will have disastrous consequences for the rapid and efficient development of PCS.[3/]

Bell Atlantic instead has urged the Commission to divide the spectrum into six 20 MHz licenses. The benefits of such a plan vis-a-vis the Commission's current plan include:

- assurance of a fully competitive PCS market that features licenses of a uniform spectrum allocation;
- vastly increased technical and economic efficiency, resulting in efficient use of the spectrum and lower costs to PCS providers;
- facilitation of much more efficient and economic consolidations of PCS spectrum blocks -- both in the upcoming PCS auctions and among providers in the aftermarket -- should such aggregation prove necessary or desirable;[4/]
- elimination of any possible need for eligibility restrictions in PCS, allowing cellular operators and cellular-affiliated LECs to bring their tremendous resources and expertise to bear in the emerging PCS marketplace.

3/ Bell Atlantic Petition at 10-13.

4/ NYNEX has proposed a re-shuffling of spectrum block assignments under the FCC's current allocation plan in order to facilitate interoperability between PCS spectrum blocks. See Petition for Reconsideration of Nynex Corporation at 9-11. Although Bell Atlantic opposes this proposal insofar as it seeks to retain the Commission's uneven spectrum block assignments, Bell Atlantic agrees with NYNEX's assessment of the problems with the Commission's current allocation proposal, e.g., that PCS cross-band operations will be difficult and expensive. This is a major reason that Bell Atlantic has proposed a plan consisting of six 20 MHz blocks.

Other petitioners have similarly advocated a regime of six 20 MHz blocks, and have highlighted the attendant benefits of such a plan.[5/]

Given the benefits of a uniform six-block scheme, the Commission should reject Time Warner's petition for the Commission to directly license 40 MHz allocations.[6/] The evidence is voluminous that 20 MHz allocations will provide sufficient spectrum for vibrant PCS operations. Furthermore, the creation of uniform 20 MHz blocks will facilitate efficient aggregation to 40 MHz licenses if Time Warner is correct that operations in some markets will require more spectrum.[7/]

Bell Atlantic opposes the Petition for Reconsideration of Pacific Bell and Nevada Bell ("Pacific") for similar reasons. Pacific has asked the Commission to reduce the

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5/ Point Communications Company observes that the Commission's current channel plan "has no basis in science or the marketplace" and is "irrational and anticompetitive". Point notes that the simple "cure" for the deficiencies in the FCC's current allocation scheme is to create "no artificial distinctions among the various spectrum blocks," and instead to allocate four 20 MHz blocks in the lower band and two 20 MHz blocks in the upper band. Petition for Reconsideration of Point Communications Company (Dec. 8, 1993), at 1-3. Telephone and Data Systems, Inc. ("TDS") similarly observes that the "record in this proceeding demonstrates that PCS can be readily implemented with 20 MHz blocks (with spectrum aggregation options available to 40 MHz to address needs of bidders for whom 20 MHz blocks are deemed inadequate)," and that the adoption of uniform 20 MHz channel block sizes will "avoid the intuitive unfairness of assignment of 30 MHz blocks only in MTA areas and of 10 MHz 'slivers' only in the upper PCS band." Petition for Reconsideration of TDS (Dec. 8, 1993), at 2-3 n.2. BellSouth notes that the creation six uniform allocations of 20 MHz will "maximize the opportunity for open entry" and give "everyone the opportunity to compete equally." Petition for Reconsideration of BellSouth (Dec. 8, 1993), at 17-18.

6/ See Petition for Partial Reconsideration of Time Warner Telecommunications (Dec. 8, 1993), at 3-11.

7/ Time Warner's worry about aftermarket transactions costs attending such aggregation is without merit. See Time Warner Petition at 8-9. Most initial license aggregations will occur almost instantaneously through the auction process, and aftermarket transactions in any event will not involve a large number of consolidations. Similarly, although Time Warner has expressed a legitimate concern with respect to the possibility of aggregation under the Commission's current "gerrymandered" scheme that would necessitate the costly and time-consuming development and purchase of dual band equipment, this consequence can be avoided by adopting the six 20 MHz plan.

number of PCS licensees to a maximum of three.[8/] There is no need for the Commission to do so. To the contrary, it is in the public interest for the Commission to create a large number of PCS providers and to maximize competition for the provision of PCS service. Although the Commission may believe it has created a large number of potential licensees, the uneven spectrum allocations virtually guarantee the creation of two dominant 30 MHz PCS providers and a number of weakened competitors of questionable viability.[9/] The Commission can cure this problem by creating six uniform 20 MHz spectrum allocations. This will provide a number of providers with sufficient spectrum to offer competitive PCS services, and will permit all qualified providers the opportunity to participate meaningfully in PCS development.

The Commission should also reject the proposed revised channel plans of CTIA and Nextel. Although Bell Atlantic agrees with Nextel that the Commission's current "decision to license 30 MHz, 20 MHz and 10 MHz spectrum blocks will create an inefficient regulatory and service market that will hamper the development of PCS,"[10/] the solution proposed by both CTIA and its first non-cellular-affiliated member is no better.

CTIA and Nextel would splinter the PCS spectrum into even more potential licenses consisting of four 20 MHz and four 10 MHz spectrum blocks. The fundamental problem with this scheme is that, like the Commission's proposed channel plan, it rests upon the faulty premise that 10 MHz standing alone is enough spectrum to offer economically viable PCS. This simply does not appear to be the case, at least in most major markets, and in any event, a channel plan featuring such small allocations remains far less technically and

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8/ See Petition for Reconsideration of Pacific Bell and Nevada Bell (Dec. 8, 1993), at 3.

9/ See Bell Atlantic Petition at 9 & n.19; Jackson/Pickholtz Report at 9-11; Hausman Affidavit at 12.

10/ Nextel Petition at 5.

economically efficient than a plan that features six uniform 20 MHz blocks as Bell Atlantic and others have proposed.[11/]

In addition, in spite of the hundreds of comments, replies, petitions for reconsideration and ex parte filings in this proceeding, the record does not "amply support the efficiency of a 10 MHz allocation" as CTIA suggests. Together, Nextel and CTIA can muster only eight parties that they allege offer record support for 10 MHz allocations: Qualcomm; NTIA; Pass Word; PDM/PCS; City Utilities of Springfield, Missouri; Motorola; PowerSpectrum, Inc.; and Nextel itself.[12/] Upon closer inspection, however, even this sparse support dwindles,[13/] with only Pass Word and Powerspectrum actually advocating

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11/ As Bell Atlantic has shown, the cost disadvantages which arise with the 10 MHz BTA blocks are likely to be substantial. Interpolating from the data in the Jackson/Pickholtz Report, a PCS system using a 10 MHz block of spectrum could be at a 26% cost disadvantage as compared to a system using 20 MHz, which will make it very difficult for a PCS provider with only 10 MHz of spectrum to be competitive. The problems for the 10 MHz blocks will be compounded by the increased presence of microwave congestion in these bands -- estimated to be much higher in this region of the PCS spectrum -- as well as the fact that dual-band PCS equipment accommodating these higher bands is expected to cost about 10%-30% more than single band units. Dr. Hausman has concluded that the "combination of the higher costs due to less spectrum, greater interference and more expensive equipment could lead to the 10 MHz blocks being uneconomical to use separately." See Bell Atlantic Petition at 7-9; Jackson/Pickholtz Report at 3, 8; Hausman Affidavit at 4-6, 9; see also Nynex Petition at 12 & Attachment, Affidavit of Nicholas Arcuri, at 7 (observing that a "stand-alone" 10 MHz PCS system is not as "competitively efficient as another licensee's 30 MHz or 40 MHz PCS system").

12/ See CTIA Petition at 4-5 & n.9; Nextel Petition at 10.

13/ For example, in spite of the claim that using Qualcomm's CDMA technology over 1.25 MHz yields capacity equivalent to a 25 MHz analog cellular system, Qualcomm in fact advocated the creation of only two huge 40 MHz PCS licenses to "ensure that the new service providers have a chance to succeed." Comments of Qualcomm, Inc. (Nov. 9, 1992), at 3. NTIA's comments of record in this proceeding were open ended, advocating the creation of a large number of PCS licenses. NTIA urged the FCC to do so by creating licenses smaller than 30 MHz, increasing the size of the overall spectrum allocation (as the Commission elected to do) or both; nevertheless, NTIA spoke in terms of issuing "four or five" licenses of "25 to 20 MHz." Comments of the National Telecommunications and Information Administration at 11 & n.15. City Utilities of Springfield, Missouri merely sought to obtain a 10 MHz "wireless tail" set-aside allocation of the type proposed (but ultimately rejected) at Paragraph 78 of the PCS Notice --- assuming the viability of 10 MHz allocations for such purposes, as suggested in the PCS Notice, without offering any evidence to support them. See Comments of City Utilities of Springfield, Missouri at 11. PDM/PCS similarly advocated 10 MHz only in the context of integrating PCS

5-10 MHz standalone allocations in unambiguous fashion. The positions of these parties in turn were conclusory and unpersuasive, with no technical backup or justification for their proposed license allocation regimes.

The CTIA and Nextel positions on reconsideration are strange, given the previous positions of these two parties in this proceeding. CTIA was at the forefront of those parties that strongly advocated 20 MHz allocations.[14/] Nextel (formerly Fleet Call) also advocated a regime of five 20 MHz providers.[15/] The current CTIA/Nextel position leads to a proposed channel plan with technical problems and inefficiencies similar to the

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licensees with LEC landline systems. Comments of PDM/PCS (Nov. 9, 1992), at 7. Motorola stated frankly that it could not "support the conclusion that 20 MHz is a sufficient amount of spectrum for each PCS licensee," let alone 10 MHz. Reply Comments of Motorola, Inc. (Jan. 8, 1993), at 9.

14/ As CTIA observed a few months ago:

> The lines are drawn between those who believe that 20 MHz is more than enough spectrum to build a PCS system, given digital compression technology and an orderly transition of microwave users to other parts of the frequency bands, and those who argue that microwave incumbents pose an interference threat that cannot be overcome with less than 40 MHz.

CTIA White Paper No. 6, "Stimulate Competition, Don't Stimulate It With A Cartel" (Sept. 7, 1993), at 1; see also Reply Comments of CTIA (Jan. 8, 1993), at 8 (arguing vigorously that 20 MHz per licensee is sufficient to provide competitive PCS services). Bell Atlantic agreed with CTIA's spectrum assessment, and submitted to and supplemented the record with much evidence to show that 20 MHz allocations would in fact permit the creation of multiple PCS competitors, while also providing enough spectrum for ample PCS operation. See, e.g., Comments of Bell Atlantic Personal Communications, Inc. (November 9, 1992), Attachment C, Technical Supplement of Dr. Charles L. Jackson, "Technical Considerations Regarding the 'Size' of PCS Licenses"; Charles L. Jackson and Raymond L. Pickholtz, "Sharing Spectrum Between PCS and Microwave Systems" (August 24, 1993) ("white paper" demonstrating 20 MHz allocations will provide ample spectrum for PCS operation); Comsearch, "Analysis of a 20 MHz PCS Spectrum Allocation for Detroit" (August 24, 1993) (concluding that PCS allocation of 20 MHz can permit deployment of a PCS system even in a major market crowded with incumbents).

15/ See Reply Comments of Fleet Call (Jan. 8, 1993) at 12 (agreeing with the "diverse plurality of commenters, including local exchange carriers, interexchange carriers, wireline and nonwireline cellular licensees, cable operators and trade associations concluded that 20 MHz PCS assignments will permit successful PCS implementation"). Indeed, as Professor Hausman has observed, recent market actions by ESMR companies such as Nextel confirm that "10 MHz spectrum blocks are inefficient for the provision of mobile services." Hausman Affidavit at 9.

Commission's current proposal. The Commission should reject it in favor of the six-20-MHz allocation that Bell Atlantic has proposed.[16/]

B. **Amount of Spectrum Allocated to PCS**

The Commission has allocated a total of 160 MHz to licensed and unlicensed PCS in order to "support and foster the development of a wide range of competitive PCS service."[17/] For licensed PCS, the Commission has allocated 120 MHz, consisting of two 30 MHz blocks and a 20 MHz block in the "low" band of 1850-1970 MHz, and four 10 MHz blocks in the "upper" band at 2130-2200 MHz. Several petitioners interested in providing Mobile Satellite Service ("MSS") have asked the Commission to reconsider the allocation of 2180-2200 MHz in the upper band to PCS, and instead urge that this band be made available for MSS.[18/]

The Commission should affirm its 120 MHz broadband PCS allocation. First, given the breadth of the PCS definition, PCS potentially will encompass many types of service offerings. The scope and possibility of the service thus renders a significant allocation of spectrum to PCS appropriate and necessary to allow a number of licensees to unlock its potential.

Moreover, the Commission has not shirked its commitment to MSS, which could eventually offer valuable, competitive service offerings. Less than one week after petitions for reconsideration were filed in this proceeding, the Commission allocated 33 MHz

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16/ For the same reasons, Bell Atlantic opposes the Petition for Reconsideration of George E. Murray, which advocates that all available wideband spectrum should be allocated in 10 MHz blocks. Petition for Reconsideration of George E. Murray (Dec. 8, 1993), at 4.

17/ PCS Order at 16, ¶ 30.

18/ See Petition for Reconsideration of AMSC Subsidiary Corporation (Dec. 8, 1993); Petition for Partial Consideration of COMSAT Corporation (Dec. 8, 1993); Petition for Partial Reconsideration of TRW, Inc. (Dec. 8, 1993).

of spectrum for MSS to be available for both geostationary and non-geostationary satellite systems.[19] In addition, the allocation adopted by the Commission in the PCS Order expressly leaves available the 1970-1990 and 2160-2180 MHz bands "that could be used for PCS satellite operations."[20] In allocating spectrum to PCS the Commission has been cognizant of and has attempted to reasonably accommodate MSS interests.[21]

19/ Specifically, the Commission allocated the 1610-1626.5 MHz and 2483.5-2500 MHz bands. See Public Notice, Spectrum Allocated for MSS Service Above 1 GHz (ET Docket 92-28), Report No. DC-2452 (Dec. 13, 1993).

20/ PCS Order at 84, ¶ 200.

21/ Comsat suggests that MSS providers did not receive adequate notice that the domestic PCS allocation might overlap with global MSS allocations at 2 GHz, complaining that the "final PCS allocation contained in the PCS Order differs significantly from the Commission's initial proposal." Comsat Petition at 15. This contention is without merit. Section 553 (b)(3) of the Administrative Procedure Act generally requires administrative agencies to issue a notice of proposed rule making setting forth the terms or substance of the proposed rules or a description of the subjects and issues involved. 5 U.S.C. § 553(b). This section has not been interpreted to mandate the specific proposal ultimately adopted, Action for Children's Television v. FCC, 564 F.2d 458, 470 (D.C. Cir. 1977), and requires only that interested persons be fairly apprised of the subjects and issues under consideration. American Transfer and Storage Co. v. ICC, 719 F.2d 1283, 1303 (5th Cir. 1983); see also Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, 7 FCC Rcd 4484, 4487 (1992). In this and the related Emerging Technologies proceedings, ample notice was given to non-PCS emerging technologies providers, including MSS providers, of the possibility that additional Emerging Technologies spectrum might be allocated to PCS beyond the 90 MHz originally proposed in the PCS Notice. The Emerging Technologies NPRM expressly apprised all emerging technology providers that the "first use of these bands will be for the creation of a new personal communications service." 7 FCC Rcd at 1546. More important, the order allocating the 225 MHz to emerging technologies uses expressly declined to identify the exact services that would use these bands precisely because the Commission wished to accommodate rapidly developing new services, including "additional PCS." 7 FCC Rcd at 6893. The Commission also received specific comment from potential MSS providers in this proceeding concerning the impact of a PCS spectrum allocation on global MSS bands. See, e.g., Comments of Communications Satellite Corporation (Nov. 9, 1992), at 4, 8. Petitioners thus cannot now be heard to argue that they lacked notice that these bands possibly could be encompassed within a PCS allocation. See 220-222 MHz, 7 FCC Rcd at 4487 (fact that one party submitted comments on issue "clearly" indicated that parties were informed of proposal); Teletext Services, 101 F.C.C.2d 827, 831 (1985) ("fact that eight parties . . . commented on this issue is clear indication that there was adequate notice").

Although MSS applicants obviously desire more spectrum, the Commission always performs a "balancing act" in making spectrum allocation decisions. In this instance, the Commission has correctly chosen to allocate an appropriate amount of spectrum to a service that promises to bring tremendous benefits to American consumers and businesses. The Commission should affirm this overall spectrum allocation to PCS.[22/]

III. CELLULAR ELIGIBILITY RESTRICTIONS

Bell Atlantic has argued on reconsideration that there is no justification for the Commission's decision to severely restrict the participation of cellular operators in PCS.[23/] The PCS Order effectively freezes out the cellular industry from in-market PCS provision, and inexplicably ignores these companies' experience and resources in wireless service provision. Bell Atlantic has urged that there is no rational basis for the speculative "potential for unfair competition"[24/] that purportedly justifies the cellular exclusion, and that the negative consequences of barring rather than encouraging cellular company participation in PCS make little sense from a public interest standpoint.[25/]

22/ Bell Atlantic is not averse to the Commission allocating additional bands outside of the PCS allocation if this is necessary to meet MSS spectrum requirements. See Motorola, Inc., Petition for Reconsideration and Clarification of PCS Second Report and Order (Dec. 8, 1993).

23/ See Bell Atlantic Petition at 13-18.

24/ PCS Order at 45, ¶ 105.

25/ See Bell Atlantic Petition at 17. Other petitions, which Bell Atlantic supports, have similarly highlighted the mistaken nature of the Commission's cellular eligibility restriction. See Petition for Reconsideration and Clarification of McCaw Cellular Communications, Inc. (Dec. 8, 1993) at 2 ("The cellular eligibility restriction ignores the realities of the wireless marketplace, and is directly contrary to the public interest. The Commission has allocated sufficient spectrum to PCS, and created enough licensing opportunities, that any alleged risk of anticompetitive conduct -- which has not been established by the record -- will be adequately restrained by market forces."); Petition for Reconsideration of Nynex Corporation (Dec. 8, 1993), at 12 (observing that the very benefits that the Commission envisioned for PCS "could be substantially inhibited if LEC and cellular carrier participation are constrained by the eligibility restrictions proposed in the rules") Petition for Partial Reconsideration of Radiofone (Dec. 8, 1993) (cellular restriction

The proposals set forth in MC's reconsideration petition, however, have met the difficult challenge of rising above the irrational and reaching the level of the absurd. Specifically, MC would impose an even harsher eligibility restriction on large cellular-affiliated entities, and asks the Commission categorically to exclude the nine largest cellular carriers and their affiliated companies or consortiums from bidding on one of the Commission's two 30 MHz MTA regions.[26/] Bell Atlantic has addressed this self-serving position in more detail in the related competitive bidding proceeding.[27/] MC's repeated attempts to use the regulatory process to eliminate potential PCS rivals should be summarily rejected.[28/]

Comcast's Petition for Reconsideration constitutes a similarly obvious case of "special pleading." Ironically, while Bell Atlantic supports Comcast's criticism of the cellular eligibility restriction, Bell Atlantic takes strong exception to Comcast's position that the cellular eligibility restriction should be lifted only for nonwireline cellular carriers. Like MC, Comcast attempts to use the Commission's rules as a means of shielding itself from legitimate competition.

Comcast has attempted to portray itself to the Commission as a small provider being overwhelmed by Bell Atlantic's "pervasive market dominance," arguing that it "cannot be considered in the same category as Bell Atlantic or be grouped under a homogeneous

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is arbitrary and capricious, lacks rational basis in the record, and constitutes unwarranted discrimination against cellular carriers).

26/ See MC Petition at 2-5.

27/ See Reply Comments of Bell Atlantic, PP Docket No. 93-253 (Nov. 30, 1993), at 20-22.

28/ MC's goal seems to be that an MC-led consortium would be the only eligible entity able to apply for and win a nationwide PCS license. See Reply Comments of Bell Atlantic at 21-22.

'cellular' classification along with LEC cellular."[29/] Comcast's effort to carve itself out for disparate regulatory treatment rings hollow. As one of the largest cable operators in the nation, Comcast recently announced its joint effort with Cox, Time Warner, TCI and Continental to offer PCS and other services.[30/] Similarly, Comcast also recently put up $500 million dollars to support QVC's bid for Paramount. In short, Comcast is a well-financed, experienced and aggressive telecommunications player who should not be excluded from offering PCS in-market. By the same token, however, Comcast should not receive special insulation from the competition of wireline companies --- large and small -- that also are seeking to develop innovative PCS services using existing infrastructure.[31/] The American consumer will only benefit from such competition, and the Commission should look past anticompetitive proposals like Comcast's and allow all qualified players the chance to develop innovative PCS systems both in and out of region.[32/]

29/ Comcast Petition at 7-8.

30/ See Cable Concerns in Venture to Rival Phone Companies, The New York Times (Dec. 2, 1993), at D1.

31/ Ironically, Comcast's inclusion of a recent message from the Chairman of Bell Atlantic as Exhibit A to its filing only further supports the removal of eligibility restrictions on all cellular-affiliated companies. As Chairman Smith's message states, Bell Atlantic is committed to creating "a full-service communications network that will offer customers all the intelligence of the broadband intelligent network and all the flexibility and convenience of wireless. That's the Bell Atlantic definition of personal communications services -- a total integration of wired and wireless networks." Comcast Petition, Exhibit A, "A Message from the Chairman," at 5. Such commitment to PCS development is precisely the kind that should be fostered by the Commission through the PCS regulatory framework -- and not actively hindered or discouraged -- if the service's potential is to be realized.

32/ Regardless of the extent to which the Commission may unwisely choose to preserve some form of eligibility restriction on cellular-affiliated entities, it should in any event clarify that such entities may bid for all PCS licenses as long as they come into compliance with the Commission's PCS ownership rules within a specified time frame before initiating PCS service. As Bell Atlantic has explained in its filings in the competitive bidding proceeding, it is in the public interest to maximize the participation of all qualified companies in the PCS auctions. The reconsideration petitions of McCaw and GTE reiterate this point. As McCaw observes, the Commission has numerous ownership restrictions in the cellular, broadcast and cable rules, and

IV. UNLICENSED PCS

AT&T has asked the Commission to "clarify" which service providers may use the PCS spectrum allocated for unlicensed PCS devices, and has argued that the unlicensed band should not be available for radio common carrier services.[33/] The Commission should reject this suggestion, which is antithetical to the flexibility that has been one of the hallmarks and objectives of the PCS Order.[34/] The Commission's allocation of spectrum to unlicensed PCS services could spawn valuable service offerings that may or may not be associated with radio common carrier services. AT&T's proposal, however, would preclude any type of third-party provision of unlicensed PCS services, e.g., a cordless pay-phone at a convenience store. Such premature stifling of innovative possibilities is both unwarranted and unwise. Because the Commission should promote and not discourage service and equipment innovation in all PCS bands, AT&T's proposal for "clarification" of the Commission's rules should be rejected.

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consistently allows flexibility in complying with them in order to avoid "fire sales," to permit the orderly disposition of properties, and to ensure the widest possible universe of potential bidders. See Petition for Reconsideration and Clarification of McCaw Cellular Communications, Inc. (Dec. 8, 1993), at 5-6. McCaw and GTE both highlight the deleterious consequences of requiring cellular-affiliated entities to divest of cellular properties before entering the auction process. See id. at 6; Petition for Limited Reconsideration or Clarification of GTE Service Corporation (Dec. 8, 1993), at 6. Furthermore, to the extent that any eligibility restrictions may be retained, Bell Atlantic supports GTE's proposal that the Commission issue Section 1071 tax certificates to companies that divest themselves cellular interests, either before bidding or after obtaining a license, in order to comply with PCS eligibility rules. As GTE explains, such use of tax certificates to assure compliance with ownership rules is fully consistent with Commission precedent, would help effectuate PCS licensing policies, and would advance the goals underlying Section 1071 of the Internal revenue Code. See GTE Petition at 8-11.

33/ See AT&T Petition for Limited Clarification and Reconsideration (Dec. 8, 1993), at 6-11.

34/ See PCS Order at 3, ¶ 1 (PCS rules are intended to "provide licensees and developers of unlicensed equipment the maximum flexibility to introduce a wide variety of new and innovative telecommunications services and equipment").

V. MAXIMUM POWER LEVELS

In the PCS Order, the Commission adopted power maximum levels intended to accommodate PCS operations while also providing a further degree of protection to incumbent microwave users.[35/] A number of petitioners have argued that these maximum power limits are overly restrictive, and will affect significantly the ability of PCS operators to provide economical coverage in rural and low density suburban areas.[36/] Bell Atlantic agrees with these observations, and supports a significant increase in PCS power levels as these petitioners have proposed.

VI. CONCLUSION

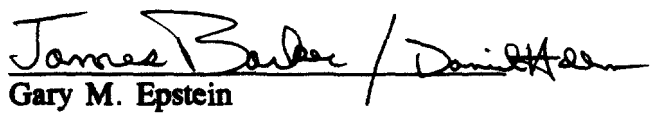
The Commission has the opportunity to revise certain aspects of the PCS Order that are destined to severely hinder the development of PCS. The Commission should act to ensure that all qualified parties are given the ability and opportunity to bring their entrepreneurial strengths to bear in the PCS marketplace.

35/ PCS Order at ¶ 156.

36/ See, e.g., Petition for Reconsideration and Clarification of PCS Second Report and Order of Motorola Inc. at 7; Petition for Reconsideration of Telocator at 1-9; US West Petition for Expedited Partial Reconsideration and for Clarification at 2-13.

Respectfully submitted,

BELL ATLANTIC PERSONAL COMMUNICATIONS, INC.

By: 

Gary M. Epstein
Nicholas W. Allard
James H. Barker
LATHAM & WATKINS
Suite 1300
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2505
(202) 637-2200

William L. Roughton
Of Counsel
for Bell Atlantic Personal Communications, Inc.

December 30, 1993

CERTIFICATE OF SERVICE

I, Daniel S. Hollman, a paralegal in the law office of Latham & Watkins, hereby certify that I have on this 30th day of December, 1993, caused to have hand delivered a copy of the foregoing comments to the following:

Hon. Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Karen Brinkmann, Esq.
Office of the Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Hon. Ervin S. Duggan
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Hon. Andrew Barrett
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Hon. James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Mr. Brian F. Fontes
Office of Commissioner Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Randall Coleman
Legal Advisor
Office of Commissioner
Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Jonahtan D. Levy
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Mr. Robert M. Pepper
Chief, Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Mr. David P. Reed
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Mr. John R. Williams
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Mr. Evan R. Kwerel
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Thomas P. Stanley
Chief Engineer
Office of Engineering & Technology
Federal Communications Commission
2025 M Street, N.W., Room 7002B
Washington, D.C. 20554

Mr. David R. Siddall
Office of Engineering & Technology
Federal Communications Commission
2025 M Street, N.W., Room 7102A
Washington, D.C. 20554

Byron F. Marchant, Esq.
Legal Advisor
Office of Commissioner Barrett
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Bruce A. Franca
Deputy Chief Engineer
Federal Communications Commission
2025 M Street, N.W., Room 7002A
Washington, D.C. 20554

And to the following by Federal Express:

Lois Irwin
PCS News
1201 Seven Locks Road, Suite 300
Rockville, MD 20854

Charles L. Jackson
Strategic Policy Research, Inc.
7500 Old Georgetown Road, 8th Fl.
Bethesda, MD 20814

Daniel P. Behuniak
Bell Atlantic Personal Communications
1310 N. Courthouse Rd, 5th Fl. E1
Arlington, VA 22201

Barry J. Nalebuff
Yale University
135 Prospect Street, Box 1-A
New Haven, CT 06520

William L. Roughton
Bell Atlantic Personal Communications
1310 N. Courthouse Rd., 5th Fl. E1
Arlington, VA 22201

William J. Todd
Bell Atlantic Personal Communications
1310 N. Courthouse Rd., 5th Fl. E1
Arlington, VA 22201

Chris Wailoo
Bell Atlantic Mobile Systems, Inc.
180 Washington Valley Road
Bedminster, NJ 07921

Dr. Raymond L. Pickholtz
Phillips Hall, Room T635, 6th Fl.
George Washington University
22nd & H Sts, NW
Washington, DC

Kim McAvoy
Broadcasting and Cable
1705 DeSales Street, NW, 6th Fl.
Washington, DC 20036

Jerry A. Hausman
c/o Cambridge Economics
4 Cambridge Center, 9th Fl.
Cambridge, MA 02142

Sally Lawrence
Fleishman-Hillard, Inc.
1301 Connecticut Ave., NW #700
Washington, DC 20036

Francine J. Berry
American Telephone & Telegraph Co.
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

Thomas A. Stroup
Telocator
1019 19th Street, N.W.
Suite 1100
Washington, DC 20036

Scott K. Morris
McCaw Cellular Communications, Inc.
5400 Carillon Point
Kirkland, Washington 98033

Art Brodsky
Deputy Managing Editor
Communications Daily
2115 Ward Court, NW
Washington, DC 20037

Edward Warner
Editor, Advanced Wireless
Communications
1101 King Street, Suite 444
Alexandria, VA 22314

Gail L. Polivy, Esq.
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, DC 20036-5801

Brenda L. Fox
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, DC 20037

James L. Wurtz
Pacific Telesis Group
1275 Pennsylvania Ave., N.W.
Suite 400
Washington, DC 20004

Carl W. Northrop
Bryan Cave
Suite 700
700 13th Street, N.W.
Washington, DC 20005

Robert S. Foosner
Senior Vice President, Government Affairs
Nextel Communications, Inc.
601 13th Street, N.W., Suite 1100 South
Washington, DC 20005

Michael F. Altschul
Cellular Telecommunications Industry
Association
Two Lafayette Centre, Third Floor
1133 21st Street, N.W.
Washington, DC 20036

Larry A. Blosser
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Aaron I. Fleischman
Fleischman and Walsh
1400 Sixteenth Street, N.W.
Suite 700
Washington, DC 20036

Francine J. Berry
American Telephone & Telegraph Co.
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920